

Gustafson[1]

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2 REPORTER'S RECORD  
3 TRIAL COURT CAUSE NO(S). 11800-JR-C  
4 IN THE INTEREST OF ) IN THE 89TH DISTRICT COURT  
5 ROBERTO BARRY )  
6 OSCAR BARRY ) OF  
7 CHILDREN ) WICHITA COUNTY, TEXAS  
8 \*\*\*\*\*  
9 EXCERPT OF TESTIMONY  
10 \*\*\*\*\*  
11  
12 On the 30th day of July, 2012, the  
13 following proceedings came on to be heard in the  
14 above-entitled and numbered cause before the Honorable  
15 Mark T. Price, Judge presiding, held in Wichita Falls,  
16 Wichita County, Texas:  
17  
18 Proceedings reported by Machine Shorthand.  
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20  
21 JOANNA BEVERAGE, CSR  
22 OFFICIAL COURT REPORTER  
23 89TH JUDICIAL DISTRICT  
24 WICHITA COUNTY, TEXAS  
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1 JOANNA BEVERAGE, CSR  
2 A P P E A R A N C E S  
3 HON. VERSEL RUSH  
4 (SBOT NO. 20759700)  
5 TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES  
6 925 Lamar, Suite 5100  
7 Wichita Falls, Texas 76301  
8 ATTORNEY FOR TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE  
9 SERVICES  
10 (940) 841-5027  
11  
12 AND-  
13 HON. ROBERT T. JARVIS  
14 (SBOT NO. 10586500)  
15 ROBERT T. JARVIS, PC  
16 123 W. Houston Street  
17 Sherman, Texas 75090  
18 ATTORNEY FOR RESPONDENT  
19 (903) 560-8500  
20  
21 AND-  
22 HON. BRET W. HALE  
23 (SBOT NO. 00795403)  
24 ATTORNEY AT LAW  
25 P.O. Box 98  
Iowa Park, TX 76367  
ATTORNEY AD LITEM  
(940) 592-5099

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JOANNA BEVERAGE, CSR

EXCERPT OF TESTIMONY

1 July 30, 2012  
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3 PETITIONER'S WITNESSES DIRECT CROSS VOIR  
Kim Gustafson 5 DIRE  
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5 RESPONDENT'S WITNESSES DIRECT CROSS VOIR  
6 None in excerpt. DIRE  
7  
8 AD LITEM'S WITNESSES DIRECT CROSS VOIR  
None in excerpt. DIRE  
9

ALPHABETICAL WITNESS INDEX

10  
11 WITNESSES DIRECT CROSS VOIR  
12 Kim Gustafson 5 DIRE  
13 End of Excerpt..... 9  
14 Reporter's Certificate..... 10  
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EXHIBIT INDEX

1 PETITIONER'S EXHIBITS OFFERED ADMITTED  
2 None in excerpt.  
3  
4 RESPONDENT'S EXHIBITS OFFERED ADMITTED  
5 None in excerpt.  
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7 AD LITEM'S EXHIBITS OFFERED ADMITTED  
8 None in excerpt.  
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(Excerpt of testimony.)

KIM GUSTAFSON,

having first been duly sworn, testified as follows:

RECROSS-EXAMINATION

BY MR. JARVIS:

Q. Well, let's talk about those aggravated circumstances. Are you familiar with the motion filed by your Department asking for aggravated circumstances to be found by the Judge?

A. Yes.

Q. All right. And do you recall the request, Section C, on the Notice of Aggravated Circumstances filed March 17th, 2011? Would it help if I approached and let you look at it?

A. Yes.

MR. JARVIS: Okay. May I approach, Judge?

THE COURT: Yes, you may.

Q. (BY MR. JARVIS) Oh, before I -- when did CPS make the decision or the determination that there wasn't any child abuse and there wasn't any child pornography? Do you recall?

A. I don't know.

Q. Okay.

MS. RUSH: May I ask Mr. Jarvis is he JOANNA BEVERAGE, CSR #7962

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showing her the Notice of Aggravated Circumstances?

MR. JARVIS: Yes, ma'am.

MS. RUSH: Thank you, Your Honor.

MR. JARVIS: Two pages.

Q. (BY MR. JARVIS) Tell me when you're finished reading that.

A. Okay.

Q. You've had a chance to go through it?

A. Yes.

Q. Okay. Now, as I recall from the CPS file, on February 7th, it was already determined that there wasn't any child pornography that they -- that the federal officials had filed, correct?

A. Yes.

Q. And yet on March 17th, under Section C, the reason -- one of the two reasons why you -- your Department asked for aggravated circumstances and by extension no more visitations is because he's engaged in conduct that would constitute an offense of possession or promotion of child pornography, correct?

A. Right.

Q. But from day one, your Department and the feds all knew he didn't, didn't you?

A. I don't know.

Q. Well, in your report that you've read that

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1 you're responsible for, you have said -- and the  
2 official CPS position is from day one, there wasn't  
3 any child pornography, right?  
4 A. Right.  
5 Q. So why on March 17th does your Department  
6 file a -- a notice to the Judge saying we're going to  
7 terminate his rights because he's possessing child  
8 pornography when you already knew a month ago he  
9 wasn't?  
10 A. I don't know.  
11 Q. It doesn't seem right, does it?  
12 A. I don't know.  
13 Q. You don't know if it seems right or not? Do  
14 you?  
15 A. I don't know.  
16 Q. Okay. And then the indecency with a child,  
17 we've heard the official CPS stance today that there  
18 wasn't any sexual molestation or abuse of the child,  
19 right -- of either one of the children, correct?  
20 A. Right.  
21 Q. And when did y'all come to that conclusion,  
22 before or after March 17th, 2011?  
23 A. I don't know.  
24 Q. Well, you had about five weeks of counseling  
25 with Ms. Porter and during that five weeks, Oscar and  
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1 Barry (sic) never made any outcry, correct?  
2 A. Right.  
3 Q. And y'all had plenty of opportunity to -- to  
4 review the audio and videotapes, correct?  
5 A. Right.  
6 Q. And somebody at some point in time finally  
7 agreed and said nobody committed indecency with a  
8 child much less David Barry, right?  
9 A. Right.  
10 Q. So did you come to this decision after you  
11 took over the case back in January 2012 or was this a  
12 decision that occurred prior to your coming on board?  
13 A. Prior.  
14 Q. All right. And can you tell me where in the  
15 four-inch stack of CPS records somebody wrote down  
16 that we staffed the case and decided there isn't any  
17 child abuse of Oscar or Roberto?  
18 A. I don't know.  
19 Q. It's not in there, is it?  
20 A. I don't think so.  
21 Q. Wouldn't you think it would be fair to the  
22 parent when you realized you didn't have what you  
23 accused him of to let him see his kids again?  
24 MS. RUSH: Objection, Your Honor,  
25 relevancy. We discussed with Mr. Barry on the stand  
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1 that they filed a motion for visitation and then  
2 withdrew it when I tried to call him to the stand, so  
3 I think he's misstating the evidence and this is  
4 irrelevant.  
5 MR. JARVIS: Judge, it has nothing to do  
6 with what Mr. Barry did. I'm asking their  
7 responsibility. They're the ones that took the kids.

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 9 And obviously, somebody is not telling the truth on  
 10 the petition, on the notice. If she says somebody  
 11 else realized it, it's their responsibility to bring  
 12 that to the attention of the Court, isn't it? They  
 13 sure as heck didn't send any notice to us. It's not  
 14 in the report.  
 15 MS. RUSH: Your Honor, I don't think  
 16 there's any requirement anywhere when CPS -- when an  
 17 attorney for CPS files a motion and gets a ruling to  
 18 say, well, we've changed our minds.  
 19 MR. JARVIS: Well, how about common  
 20 decency?  
 21 MS. RUSH: Your Honor, I object to that  
 22 comment and I object to him speaking to me rather to  
 23 the Court.  
 24 THE COURT: That's sustained. The  
 25 objection's sustained.  
 (End of Excerpt.)  
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1 STATE OF TEXAS )  
 2 )  
 3 COUNTY OF WICHITA )  
 4  
 5 I, Joanna Beverage, Official Court Reporter in and  
 6 for the 89th District Court of Wichita County, State  
 7 of Texas, do hereby certify that the above and  
 8 foregoing page numbered 9 contains a true and correct  
 9 transcription of all portions of evidence and other  
 10 proceedings requested in writing by counsel for the  
 11 parties to be included in this volume of the  
 12 Reporter's Record, in the above-styled and -numbered  
 13 cause, all of which occurred in open court or in  
 14 chambers and were reported by me.  
 15  
 16 I further certify that this Reporter's Record  
 17 of the proceedings truly and correctly reflects the  
 18 exhibits, if any, admitted by the respective parties.  
 19  
 20 I further certify that the total cost for the  
 21 preparation of the Reporter's Record is \$115.00 and  
 22 will be paid by Mr. Robert Jarvis.  
 23  
 24 WITNESS MY OFFICIAL SIGNATURE on this the 25th  
 25 day of September, 2012.

Joanna Beverage, CSR No. 7962  
 Expiration Date: 12-31-13  
 Official Court Reporter  
 89th Judicial District Court  
 900 Seventh Street, Suite 300  
 Wichita Falls, Texas 76301  
 (940) 766-8194

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